

LAWRENCE C. HARRIS ET AL.

IBLA 81-928, 81-961, 81-1091,

81-1097, 82-42

Decided April 5, 1982

Appeals from decisions of Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications and canceling oil and gas leases and overriding royalty interests, in whole or in part. C-30503, et al.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings

Where individuals who are officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, and where the corporation has filed no applications, cancellation by BLM of leases awarded to such individuals pursuant to those drawings is improper when the individuals establish that there was no breach of their fiduciary duty to the corporation creating a corporate interest in the individual applications.

2. Oil and Gas Leases: Applications: Drawings

Where individual officers and/or directors of a corporation file noncompetitive

oil and gas lease applications for the same parcels in the same drawings, but the corporation has not filed any applications, rejection of the applications by BLM is improper when the individuals establish that there was corporate authorization for such individual filings; that any prior assignments to the corporation of Federal oil and gas leases previously acquired through the simultaneous system were motivated by personal financial and business considerations, rather than by corporate obligation; and that no arrangement, agreement, scheme, or plan giving the corporation an interest in any of the applications ever existed.

APPEARANCES: John H. Pickering, Esq., and Timothy N. Black, Esq., Washington, D.C., and Sim B. Christy IV, Esq., Roswell, New Mexico, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lawrence C. Harris and others 1/ have appealed from various decisions of the Colorado State Office, Bureau of Land Management (BLM), rejecting their simultaneous oil and gas lease applications or canceling noncompetitive oil and gas leases or overriding royalty interests in whole or in part because of alleged violations of the regulatory provisions relating to multiple filings. 2/

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1/ Appendix A contains a list of the appellants, the 27 leases affected, the relevant simultaneous oil and gas lease drawings, and the dates of the BLM decisions. Marion V. Harris is the wife of Lawrence C. Harris. Scott A. Harris, Judy Harris, and Abby Harris Yates are their adult children.

2/ In IBLA 81-928, 81-1097, and 82-42, BLM rejected simultaneous oil and gas lease applications drawn with first priority in various simultaneous oil and gas lease drawings. In IBLA 81-961, BLM approved the assignment of shallow operating rights in a portion of noncompetitive oil and gas lease C-22205 to Paul S. Coupey, as a bona fide purchaser, and cancelled the remainder of the

In each case, BLM acted on the basis that either two or more of the officers of the Abby Corporation or the New Mexico Oil Corporation (the corporations) had filed applications or offers for the respective leases in the relevant simultaneous oil and gas lease drawings and that, thereby, those corporations had more than a single opportunity of obtaining a noncompetitive oil and gas lease by virtue of an interest in each of the officers' applications. BLM noted that a review of its records had revealed that such officers were also either directors or substantial shareholders, or both, of the corporations. In the decisions appealed in IBLA 81-961 and 81-1091, BLM stated that these individuals had "fiduciary duties" to the corporations which were breached. In the decisions appealed in IBLA 81-928, 81-1097, and 82-42, BLM noted that such individuals had in the past "frequently" assigned leases acquired in simultaneous oil and gas lease drawings to the corporations.

BLM cited two regulations in support of its decisions rejecting applications. The first, 43 CFR 3112.2-1(f), provides that: "No person or entity shall hold, own or control any interest in more than one application for a particular parcel."

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fn. 2 (continued)

lease, held by New Mexico Oil Corporation, as a result of an assignment from Lawrence C. Harris effective Aug. 1, 1980, and the overriding royalty interests held by Lawrence C. Harris in the lease and by New Mexico Oil Corporation in the approved assignment. In IBLA 81-1091, BLM canceled noncompetitive oil and gas leases held by New Mexico Oil Corporation as a result of assignments from Lawrence C. and Marion V. Harris effective Aug. 1 and Sept. 1, 1980, and Mar. 1, 1981, noncompetitive oil and gas leases held by Lawrence C. Harris, and overriding royalty interests held by Lawrence C. and Marion V. Harris.

The second, 43 CFR 3112.6-1(c), provides, in relevant part, that:

Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited and any application made in accordance with such agreement, scheme, plan or arrangement shall be rejected. [3/] Specifically:

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(3) Filings by members of an association (including a partnership) or officers of a corporation, under any arrangement, agreement, scheme, or plan whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited. [4/]

In their statement of reasons for appeal, appellants contend that "[t]here was no agreement, scheme, plan, or arrangement of any sort giving any of the appellants more than a single opportunity for successfully obtaining a lease" (Statement of Reasons at 20). Appellants submit affidavits

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3/ In addition, 43 CFR 3112.6-3 provides for cancellation of a lease already issued or any interest therein where the lease "has been issued on the basis of an application or offer which properly should have been rejected," and for preservation of the rights of a bona fide purchaser.

4/ Prior to June 16, 1980, the applicable regulation, 43 CFR 3112.5-2 (1979), similarly provided, in relevant part:

"When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. \* \* \* In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease \* \* \*." (Emphasis added.)

The BLM decisions appealed in IBLA 81-961 and 81-1091, both of which concerned cancellation of leases, cited this regulation as being in effect at the time the offers were filed in those cases. The decisions stated that pursuant to this regulation the offers should have been rejected or the leases canceled, and that the authority to cancel leases has been carried over in 43 CFR 3112.6-3.

signed by each of the individual appellants in which they deny under oath the existence of any such agreement, scheme, plan, or arrangement. Appellants assert that no legal or factual basis exists for the grounds variously stated in the decisions, i.e., breach of fiduciary duty and "frequent" assignments, for rejection of applications and cancellation of leases and overriding royalty interests.

Appellants argue that the corporations do not have an interest in applications filed by the individual appellants, by virtue of a fiduciary duty owed to the corporations, because "[t]he minutes of each corporation, beginning as far back as 1969, flatly state that the officers, directors, and stockholders are free to acquire oil and gas leases for their own individual benefit, without any obligation to the corporation." Id. In support appellants submit copies of these corporate minutes. Appellants also contend that no inference of a prohibited agreement can be drawn from the mere fact that the individual appellants have made assignments to the corporations of leases obtained in simultaneous oil and gas lease drawings. Appellants also deny BLM's characterization that such assignments have been "frequent," pointing out that Lawrence C. and Marion V. Harris have assigned leases to the New Mexico Oil Corporation on only one occasion, the corporation having been assigned only two leases previously in 1966 for qualifying purposes, and that Scott A. Harris, Judy Harris, and Abby Yates have assigned only one-third of their leases to the Abby Corporation in its 10-year history. Appellants point to other evidence to support the lack of a prohibited agreement or understanding, namely: (1) Such assignments as have been made were done for personal economic reasons; (2) assignments "often occurred a year or more after a lease was awarded"; (3) the individual appellants "have

always paid the filing fees for their applications, as well as rental payments on resulting leases, out of their personal funds"; (4) the individual appellants retained "substantial overriding royalties" in return for each assignment; (5) over the years the individual appellants have assigned an almost equal number of leases to third parties as to each of the corporations; and (6) the individual appellants have treated their state and private oil and gas leases in the same manner as their Federal leases (Statement of Reasons at 42-43). 5/

Based on affidavits and other documents submitted by appellants on appeal, the following picture of the corporations emerges. New Mexico Oil Corporation was organized in 1960. Each of the individual appellants is presently a shareholder and director of the corporation. Lawrence C., Marion V., Scott A., and Judy Harris are officers of the corporation. The Articles of Incorporation provide that one of its corporate purposes is "to acquire and hold real estate of all kinds including oil and gas leases" (Appellants' Exh. 17 at 20). Prior to 1980, the corporation had virtually no assets or income. In 1980, Lawrence C. and Marion V. Harris transferred all of their existing Federal, state, and private oil and gas leases to the corporation in exchange for outstanding shares of stock. Since that time, Lawrence C. and Marion V. Harris have assigned only one Federal oil and gas lease to the corporation. While that lease, W-68603, was issued February 1, 1981, and assigned March 3, 1981, it resulted from priority given an offer filed in June 1979 and was considered part of the July 1980 transfer (Supp. Affidavit of Lawrence C. Harris at 2-4).

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5/ Despite requesting and receiving an extension of time to file an answer in this case, the Office of the Solicitor has filed no answer in support of BLM's decisions.

Abby Corporation was organized in 1962. Each of the individual appellants is presently a director of the corporation. Scott A. Harris, Judy Harris, and Abby Yates are shareholders, and Scott A., Judy, and Lawrence C. Harris are officers of the corporation. The Articles of Incorporation provide that one of its corporate purposes is "[t]o acquire, hold, and deal in oil and gas leases" (Appellants' Exh. 3 at 2). Neither the New Mexico Oil Corporation nor the Abby Corporation has filed, on their own behalf, applications for Federal oil and gas leases in a simultaneous oil and gas lease drawing.

[1] We will first address those BLM decisions (IBLA 81-961 and 81-1091) which canceled leases and overriding royalties on the basis that Lawrence C. Harris and Marion V. Harris both had filed offers in the drawings; that at the time of the filing of the offers both had fiduciary duties to New Mexico Oil Corporation; and that both owned substantial portions of the company's stock. BLM considered the filings a breach of fiduciary responsibility and as prohibited multiple filings.

We can find no support for BLM's position. Appellants correctly point out that the filing of offers by corporate officers or directors does not breach a fiduciary obligation where the shareholders have expressly permitted such filings and the corporation has not filed for the same parcels. Appellants assert that the decisions in Raymond J. Stipek, 74 I.D. 57 (1967), and D. M. Dowdle, 46 IBLA 83 (1980), control the outcome in this case.

The Stipek case involved BLM's rejection of certain simultaneous oil and gas lease offers. In that case, each of the two appellants was, at the

time the offers were filed, an officer and 50 percent stockholder in a corporation organized for the purpose of acquiring, holding, or disposing of oil and gas leases. Each of the appellants had filed offers in the drawings; the corporation had not. Id. at 58. The Department concluded that it was error to reject the offers on the sole basis of the corporate relationship stating that under the facts the corporation would not have had an interest in the appellants' filings, and the corporation therefore would not have had an unfair advantage. Id. at 63.

Regarding the fiduciary relationship, the Department stated in Stipek at pages 61-62 that

[t]he mere existence of a fiduciary relationship between the appellants and their corporation would not create a corporate interest in the filings made by the appellants. The Bureau was therefore in error in holding that it did. The critical question then is whether the appellants breached their fiduciary duty so as to create a corporate interest in their offers.

In McKay v. Wahlenmaier, supra, [226 F.2d 35 (D.C. Cir. 1955)] there could be no question but that Culbertson's [president and director of the corporation] offer, if intended for his own benefit, was in direct opposition to the interests of the corporation which he represented in a fiduciary capacity since the corporation filed an offer in its own right. Because Culbertson knew that the corporation wanted the lease and that acquisition of the lease was in the corporation's line of business and because he was competing with it for a potentially valuable business opportunity, the court concluded that Culbertson would be held in a suit brought by the corporation or a stockholder to hold his lease for the use and benefit of the corporation.

We do not have the same situation here. There is no evidence in the form of an offer filed by the corporation that the corporation was directly interested in obtaining leases on the lands applied for by the individual offerors. There is no other evidence of interest unless that interest is to be conclusively presumed from the nature of the corporation's business. The cited authorities clearly indicate that such a presumption is not conclusive and that, even if it were, the violation of a fiduciary

duty would not automatically be found in the acquisition of the business opportunity by a corporate officer but that the particular facts of each case must be examined to determine the nature of the interests involved. [6/]

In IBLA 81-961 and 81-1091 the following facts are relevant. Offers were filed by corporate officers. Stockholders had approved such filings. 7/ The corporation did not file competing offers. Therefore, in each instance the person who filed an offer did so pursuant to an agreement of record permitting such individuals to acquire oil and gas leases in his/her individual capacity. There is no evidence of any agreement, scheme, or plan which resulted in New Mexico Oil Corporation gaining a greater possibility of

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6/ D. M. Dowdle, supra, involved a similar situation in which officers of a corporation filed simultaneous oil and gas offers and the corporation did not. The Board reversed BLM's rejection of the offers, citing Stipek.

7/ At an annual meeting of the stockholders of the New Mexico Oil Corporation held on July 21, 1969, the stockholders adopted the following motion:

"L. C. Harris, Marion V. Harris, Judy Harris, Scott Harris or Abby Harris had no obligation nor is there an arrangement of any kind whereby these named individuals have an obligation to make a conveyance or grant an interest of any kind to a Federal oil and gas lease in any state to New Mexico Oil Corporation or Abby Corporation; that any lease or interests of any kind acquired by any of the named persons is their sole and separate property and each has the right to operate separately and independently of each other and New Mexico Oil Corporation."

(Appellants' Exh. 17 at 8-9, emphasis added). This policy of allowing officers, directors, and stockholders to acquire oil and gas leases was also documented in minutes of annual meetings of both directors and stockholders in 1980 and 1981. Id. at 12-15, 17, and 19.

The Department stated in Raymond J. Stipek, supra at 62-63:

"[W]here there is a duty owed to a corporation there must, in fact, be a duty owed to some person or persons. If all of the officers and stockholders of a corporation agree upon a course of action which may be detrimental to the corporation as such or which may result in its dissolution, can the corporation, unrepresented by anyone having an interest in the corporation, maintain an action in its own right against the officers and stockholders? Obviously, it cannot, and the question of fiduciary duties does not arise in the case of such concerted action. The duty of a fiduciary to his corporation, then, is his duty to the other officers, directors and stockholders of the corporation, and if he has violated no duty to any of these he has breached no trust with respect to the corporation."

See Graybill Terminals Co., 33 IBLA 243, 245-46 (1978).

obtaining a lease or interest therein. See 43 CFR 3112.5-2 (1979). In fact, all evidence is directly contrary to such a conclusion. We must conclude that the corporation did not have any interest in the offers involved herein, and that BLM improperly canceled the leases and overriding royalty interests.

There is no factual or legal basis for distinguishing the cases herein from Stipek. It is controlling. The BLM decisions appealed in IBLA 81-961 and 81-1091 must be reversed.

[2] We turn now to consideration of the BLM decisions appealed in IBLA 81-928, 81-1097, and 82-42. In all of those cases simultaneous oil and gas lease applications were rejected because BLM believed that there was some type of arrangement, agreement, scheme, or plan whereby New Mexico Oil Corporation and/or Abby Corporation gained an unfair advantage over other applicants in the drawings. As support for this conclusion, BLM indicated that its records showed that officers and/or directors, and/or substantial stockholders in these corporations, all or some of whom participated in the drawings, "frequently" assigned leases acquired through the simultaneous system to one or the other of the corporations.

The applicable regulation, 43 CFR 3112.6-1(c)(3), cited by BLM in its decisions, does not prohibit filings for the same parcel made by two or more officers of a particular corporation. Rather, it prohibits filings by corporate officers "under any arrangement, agreement, scheme, or plan whereby the \*

\* \* corporation has an interest in more than a single filing for a single

parcel." BLM cites "frequent" assignments as evidence of such an arrangement, agreement, scheme, or plan.

Clearly, if at the time of filing the individual appellants had an arrangement, agreement, scheme, or plan to assign any Federal oil and gas lease obtained in a simultaneous oil and gas lease drawing to the corporation, the corporation would have had an interest in more than a single filing, and the individual applications would have been properly rejected. However, the fact that in the past the individual appellants have assigned to the corporation leases acquired pursuant to the simultaneous system does not necessarily support a conclusion that there was such an understanding. Indeed, even the frequent assignment of such leases would not, itself, require rejection of applications.

All of the individual appellants have submitted affidavits that any assignments that were made to the corporations were not made pursuant to any agreement or understanding at the time the lease applications were filed. Appellants further state that no such agreement or understanding has ever existed. The individual appellants have submitted detailed documents and statements outlining their assignments of Federal oil and gas leases, both to the corporations in question and to third parties. From these submissions the following may be derived. Lawrence C. Harris, prior to July 1980, had assigned only two Federal oil and gas leases to New Mexico Oil Corporation; however, he and his wife had assigned hundreds of Federal oil and gas leases to third parties prior to that time (Affidavit of Lawrence C. Harris at 17-18; Exh. 50 at 1). In July 1980 he and his wife transferred all their

interests in their oil and gas leases, including Federal, state, and private fee leases, retaining overriding royalty interests, to New Mexico Oil Corporation. The transfer was made on the advice of their tax accountant and was based on personal income tax considerations and a desire to ease future estate administration. While Lawrence C. Harris continues to acquire and hold Federal oil and gas leases, he states that any future decision to assign leases to New Mexico Oil Corporation will depend on his assessment of his personal situation at the time (Supp. Affidavit of Lawrence C. Harris at 2-5).

Over the years the children have assigned between 30 and 35 percent of their Federal leases to Abby Corporation. They state that such assignments were made solely on the basis of economic benefits to them. All have made assignments to third parties also. None has assigned any lease to the corporation since 1979.

There is absolutely no evidence to support the conclusion that the individual appellants were engaged in any arrangement, agreement, scheme, or plan that leases obtained by them through the simultaneous system would be assigned to either of the corporations, thereby giving the corporations an interest in the applications.

We must conclude that the individual appellants undertook their activities in the Federal oil and gas simultaneous system independently of the corporations; that such activities were fully disclosed and approved by the corporations and their stockholders; that assignments were made by the individual appellants to the corporations, but that there was no understanding

giving the corporations an interest in any of the applications filed by individual appellants; that assignments of leases have been motivated by personal financial and business considerations, rather than because of any preexisting understanding; and that there never has been an understanding giving the corporations an interest in any of the applications filed by the individual appellants. The BLM decisions appealed in IBLA 81-928, 81-1097, and 82-42 must also be reversed.

Therefore, while BLM has sought to infer regulatory violations based on its perception of appellants' simultaneous oil and gas leasing activities, appellants have presented a wealth of information which evidences a scrupulous adherence to Departmental regulations and precedents governing the simultaneous oil and gas leasing system.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases remanded to BLM for further action consistent herewith.

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Bruce R. Harris  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

## APPENDIX A

IBLA	Names of			Dates of	
<u>Nos.</u>	<u>Appellants</u>	<u>Lease Nos.</u>	<u>Drawings</u>	<u>BLM Decisions</u>	
81-928	Abby H. Yates	C-30503	July 1980	July 27, 1981	
	C-30523	July 1980			
	C-30599	July 1980			
	Scott A. Harris	C-30514	July 1980		
	C-30595	July 1980			
	C-31309	Jan. 1981			
	Lawrence C. Harris	C-30515	July 1980		
	Judy Harris	C-30519	July 1980		
	Marion V. Harris	C-30539	July 1980		
81-961	New Mexico Oil Corp. and Lawrence C. Harris	C-22205	Nov. 1974	Aug. 12, 1981	
81-1091	New Mexico Oil Corp. and Marion V. Harris	C-22120	Oct. 1974	Sept. 10, 1981	
		C-23533	Jan. 1976		
		C-23617	Feb. 1976		
		C-24474	Sept. 1976		
		C-25190	Feb. 1977		
		C-27597	Dec. 1978		
		(Acq.)			
		C-27160	Dec. 1978		
		C-28123	Apr. 1979		
		(Acq.)			
		C-28159	Apr. 1979		
	New Mexico Oil Corp. and Lawrence C. Harris	C-25319	Mar. 1977		
		C-27042	July 1978		
		C-27844	Feb. 1979		
	Lawrence C. Harris	C-26458	Feb. 1978		
81-1097	Lawrence C. Harris	C-30907	Sept. 1980	Aug. 17, 1981	
82-42	Abby H. Yates	C-30902	Sept. 1980	Oct. 6, 1981	
	Lawrence C. Harris	C-31264	Jan. 1981		
	C-31281	Jan. 1981			

